

1 Suzanne J. Romajas
 2 SECURITIES AND EXCHANGE COMMISSION
 3 100 F Street, N.E.
 4 Washington, DC 20549-5971
 5 Email: RomajasS@sec.gov

6 *Attorney for Plaintiff*

7 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

8 SECURITIES AND EXCHANGE COMMISSION,

9 Plaintiff,

10 vs.

11 JOHNNY R. THOMAS,
 12 ROBERT C. POTTS,
 13 JONATHAN BRETT WOODARD, and
 14 JOHN C. FRANCIS,

15 Defendants.

Case No. 19-cv-1132-JCM-EJY

STIPULATION AND
~~**[PROPOSED]**~~ **PROTECTIVE**
ORDER WITH RESPECT TO
THE PRODUCTION OF
SENSITIVE PERSONAL
INFORMATION AND
~~**[PROPOSED]**~~ **NON-WAIVER**
AND CLAWBACK ORDER

16 WHEREAS, the parties are engaged in disclosure and discovery activity in this matter that
 17 will include, among other things, the initial service of documents identified in the parties' Rule 26(a)
 18 reports, the production of documents and information by parties and non-parties in response to
 19 subpoenas and other requests for information, and the taking of testimony;

20 WHEREAS, portions of many such documents, information, and transcripts will likely
 21 contain personally identifiable information about individuals, including the Defendants in this matter;
 22 and

23 WHEREAS, the parties desire to protect such information from use for any purpose other than
 24 this litigation and therefore desire to expand the protections offered by Federal Rule of Civil
 25 Procedure 5.2(a) and Local Rule IC 6-1 of the United States District Court for the District of Nevada;

1 ACCORDINGLY, Plaintiff Securities and Exchange Commission, and Defendants Johnny R.
2 Thomas, Robert C. Potts, Jonathan “Brett” Woodard, and John C. Francis, through their respective
3 counsel, hereby stipulate to and petition the Court to enter the following Stipulated Protective Order:

4 As used in this Order, the term “Sensitive Personal Information” shall include any one or more
5 of the following categories of personal and private information: (a) a social security or tax
6 identification number; (b) individuals’ financial information, including but not limited to statements
7 or account numbers for any bank account, credit card account, brokerage account, fund transfer or
8 payment facilitation account, mortgage, or loan; (c) biometric data, such as a finger or voice print;
9 (d) tax information, including but not limited to tax returns; (e) the phone number(s) of any individual
10 person; (f) the birth date of any individual person; (g) the name of any individual person who, at the
11 time of the filing of the Complaint in this action, was known to be less than 18 years old; (h) medical
12 information, and/or (i) the maiden name of an individual’s mother.

13 Sensitive Personal Information does not include public information about an individual that
14 is lawfully available to the general public.

15 Sensitive Personal Information produced during the course of this litigation shall not be used
16 by any party to this litigation (“Party”) except as expressly permitted hereunder.

17 **Sensitive Personal Information:**

- 18 1. Shall be used by the Parties for the purposes of this litigation only;
- 19 2. Shall not be used by the Parties for any business or commercial purposes;
- 20 3. Shall not be disclosed to any third party, published or otherwise made public in any form
21 by any Party except as permitted below;
- 22 4. May be disclosed only to the following persons, on an as-needed basis in the course of the
23 litigation:
 - 24 a. A Party;
 - 25 b. Counsel for any Party and employees and agents of counsel who have
26 responsibility for the preparation and trial of this action, including but not limited
27 to attorneys, employee consultants, legal support staff, and any person or entity
28 with whom a Party contracts to reproduce or manage documents;

- 1 c. Independent (non-employee) consultants, expert witnesses, or advisors retained by
- 2 any Party or counsel for any Party to assist in the preparation and trial of this
- 3 action;
- 4 d. Deposition and trial witnesses and others whom counsel in good faith have a
- 5 reasonable expectation may be a deposition or trial witness to the action; provided
- 6 that such persons shall first be advised of the existence and content of this
- 7 Stipulation and Protective Order and shall execute a Declaration of Confidentiality
- 8 in the form attached hereto as Exhibit A;
- 9 e. A document's author(s), recipient(s), or copyee(s);
- 10 f. The Court, members of the jury, and court personnel, including any Judge or
- 11 Magistrate assigned to the action, their staff, as well as court reporters or
- 12 stenographers engaged to record depositions, hearings or trial testimony, and their
- 13 employees.

14 The disclosing Party shall retain and preserve all completed and signed Declarations of
15 Confidentiality received from persons identified in Paragraphs 4(d) for the duration of this action and
16 any appeals arising therefrom, or until further order of the Court.

17 Notwithstanding any other provisions contained herein, nothing in this Stipulation and
18 Protective Order shall be construed to limit or otherwise abrogate the SEC's ability to make its files
19 available pursuant to the "Routine Uses of Information" section of SEC Forms 1661 or 1662, or to
20 comply with any other statutory obligation.

21 All Sensitive Personal Information that is filed with the Court, or offered into evidence at the
22 trial of this action, or referenced in any proceeding in this action, including in arguments made to the
23 Court, shall comply with Federal Rule of Civil Procedure 5.2(a) and Local Rule IC 6-1 of the United
24 Stated District Court for the District of Nevada.

1 **Non-Waiver and Clawback Provision Concerning Privileged Material Inadvertently**
2 **Disclosed During Litigation**

3 The inadvertent production of any document or information during discovery in this case shall
4 be without prejudice to the disclosing Party’s claim that such material is privileged under the attorney-
5 client privilege, the attorney work product doctrine, or any other applicable privilege or protection,
6 and no disclosing Party shall automatically be held to have waived any claims or arguments under the
7 inadvertent production doctrine.

8 If a disclosing Party discovers that it inadvertently produced during discovery a document or
9 information that it claims is privilege under the attorney-client privilege, the attorney work product
10 doctrine, or any other applicable privilege or protection, the disclosing Party shall so notify the Party
11 or Parties to whom the document or information was produced in writing within five (5) calendar
12 days of such discovery. The failure to provide such notification within the five-day period shall result
13 in a waiver of the claim of privilege. Within five (5) calendar days of receipt of written notice from
14 the disclosing Party, the receiving Party or Parties shall return, sequester or destroy all copies of the
15 identified material and make no further use of such material pending resolution of the claim.

16 The Parties shall meet and confer in an effort to resolve any disagreements concerning the
17 identified material, including, but not limited to disagreements concerning whether the material is
18 privileged, whether the production was inadvertent, whether the privilege has been waived. If the
19 Parties cannot resolve their disagreement(s), any Party may apply to the Court within five (5) days of
20 the meet-and-confer and present the information to the Court under seal for a ruling on the disclosing
21 Party’s claim.

22 Nothing in this agreement is intended to shift the burden of the Party claiming the privilege
23 of establishing that the privilege applies and has not been waived.

24 The parties agree to be bound by the terms of this Order pending its entry by the Court. Any
25 violation of the terms of this Order before it is entered by the Court shall be subject to the same
26 sanctions and penalties as if the Order had already been entered by the Court.

27 The obligations imposed by this Order shall remain in effect even after the final disposition
28 of this litigation unless the Court orders otherwise.

1 This Stipulation and Proposed Order may be modified by agreement of the Parties and upon
2 further Order of the Court for good cause shown.

3
4 Respectfully submitted,

5
6 Dated: October 25, 2019:

7 /s/ Suzanne J. Romajas
8 Suzanne J. Romajas
9 Securities and Exchange Commission
10 100 F Street, NE
11 Washington, DC 20549-5971
12 RomajasS@sec.gov

13 *Attorney for Plaintiff*

14 Dated: October 25, 2019:

15 /s/ Adam C. Trigg
16 Randall R. Lee
17 Jessica Valenzuela Santamaria
18 Amy M. Smith
19 Cooley LLP
20 1333 2nd Street, Ste. 400
21 Santa Monica, CA 90401
22 Randall.Lee@cooley.com

23 *-and-*

24 Adam C. Trigg
25 Bergeson LLP
26 111 N. Market Street, Ste. 600
27 San Jose, CA 95113
28 ATrigg@be-law.com

Attorneys for Defendants Thomas and Francis

[signatures continued on next page]

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Dated: October 25, 2019:

/s/ Jonathan D. Bletzacker
Jonathan D. Bletzacker
Brent R. Baker
Clyde Snow & Sessions
201 South Main Street, Ste. 1300
Salt Lake City, UT 84111
Email: BRB@clydesnow.com

Attorneys for Defendants Potts and Woodard

IT IS SO ORDERED.


DAYNA J. ZOUCHAL
UNITED STATES MAGISTRATE JUDGE

DATED: October 28, 2019

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EXHIBIT A
UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

JOHNNY R. THOMAS,
ROBERT C. POTTS,
JONATHAN BRETT WOODARD, and
JOHN C. FRANCIS,

Defendants.

Case No. 2:19-cv-1132-JCM-EJY

DECLARATION OF
CONFIDENTIALITY

13 I hereby acknowledge that I am to receive documents or information pursuant to the terms of
14 a Protective Order with Respect to the Production of Sensitive Personal Information (“Order”) in
15 *Securities and Exchange Commission v. Johnny R. Thomas, et al.*, Case No. 2:19-cv-1132-JCM-EJY,
16 pending in the United States District Court for the District of Nevada.

17 I acknowledge receipt of a copy of the Order, and certify that I have read it. I agree to be
18 bound by the terms and restrictions set forth therein.

19 I agree to submit to the jurisdiction of the United States District Court for the District of
20 Nevada with respect to any proceedings relating to or arising from this Declaration.

21 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and
22 correct.
23

24 _____
(Signed)

25 _____
(Print Name)

26 _____
(Date)
27
28